BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of: Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92, DA 06-1730

REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

The People of the State of California and the California Public Utilities Commission (California or California Commission) respectfully submit these Reply Comments in response to the Federal Communications Commission's (FCC) Public Notice seeking comments on the intercarrier compensation (ICC) reform proposal known as the "Missoula Plan"[1] in the above-captioned proceeding.

I. SUMMARY OF CALIFORNIA'S REPLY COMMENTS

In our Reply Comments, the California Commission responds to certain criticisms of the Missoula Plan's Edge[2] and interconnection proposals, including the proposed

[1] Missoula Plan or Plan is used interchangeably in the context of these comments.

[2] An Edge refers to the location on a carrier's network where it would receive traffic for routing within its network and where it would perform the termination function for traffic received from other carriers. Missoula Plan, Section III.B.1. at p. 42.

Tandem Transit Service rate, and also proposes a 100% flow-through of the savings in intercarrier rates to a carrier's customers.

In our Comments filed with the FCC on October 25, 2006, the California Commission stated its concern that the Plan's proactive Edge proposal does not have a broad consensus of support. In these Reply Comments, we suggest certain changes to the proposal in an effort to help move parties to a consensus on this issue. These suggestions are intended to mitigate the Edge proposal's negative impact on competitive carriers[3] while continuing to ensure universal service and reasonable rates for rural customers.

In particular, the California Commission focuses on four aspects of the Edge scheme. First, due to the uncertainty of the legality of the Edge proposal under Section 251(c)(2)(B)[4] of the Communications Act of 1934 as it applies to non-rural ILECs, and to address concerns of competitive carriers, California recommends that the Edge scheme should apply only to competitive carriers and certain rural carriers. Secondly, we recommend rejection of the Missoula Plan's proposal to allow a Track 2 or Track 3 carrier to designate an end office as an Edge when the end office subtends the carrier's own access tandem. Thirdly, we urge adoption of the proposed Rural Transport Rule and Modified Rural Transport Rule (Rural Transport Rules). Finally, we suggest a reduction in the proposed Tandem Transit Rate.

In addition, California recommends that the Plan should require carriers to flow-through 100% of the savings in intercarrier compensation rates to their customers.

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[3] CLECs, wireless providers and any other non-ILEC carriers.

[4] 47 U.S.C. 251(c)(2)(B).

II. BACKGROUND

In its February 10, 2005 NPRM, the FCC noted that the preservation of universal service is a priority under the Communications Act of 1934 and that "fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime."[5] The FCC also recognized the unique impact intercarrier compensation reform could have on rural LECs. "In particular, many rural LECs collect a significant percentage of their revenue from interstate and intrastate access charges. Because of the high costs associated with serving rural areas, we must be certain that any reform of compensation mechanisms does not jeopardize the ability of rural consumers to receive service at reasonable rates."[6] California concurs that any new compensation scheme should maintain and promote universal service.

Although we strongly support competition, we recognize that there are still unique circumstances impacting rural carriers, particularly rural ILECs. Not only are rural LECs burdened with higher operating costs than their competitors, rural ILECs also must fulfill carrier of last resort obligations. And although California supports the ultimate goal of a competitively and technologically neutral regime, we are mindful of the fact that competitive carriers continue to rely on the landline public switched telephone network to deliver the majority of their calls. Therefore, at this time, it is to the benefit of the industry as a whole, as well as to rural consumers, that rural ILECs be permitted to gradually transition away from their current dependence on a system of implicit

[5] *Further Notice of Proposed Rulemaking*, CC Docket No. 01-92, rel. March 3, 2005, para.32.
[6] *Id.*

intercarrier subsidies in a manner that does not result in deterioration in the quality of the network or rate shock to their customers.

Having said this, California is also mindful of the fact that the Missoula Plan, in many respects, appears to favor incumbent LECs over their competitors. In fact, to lessen this disparate treatment of carriers, the California Commission, in its Comments filed with the FCC on October 25, 2006, suggested several changes to the Plan. In particular, we recommended that the FCC reduce High Cost Loop Fund support in order to encourage carriers to operate in a more economically efficient manner. Additionally, we urged the FCC to limit any LEC revenue recovery under the Plan to actual losses.

III. CALIFORNIA COMMISSION'S PROPOSAL ON THE EDGE ISSUE

In our October 25, 2006 Comments on the Missoula Plan, we stated that although the Edge proposal appears to be beneficial to participants within the industry, we are concerned that the proposal does not have a broad consensus of support and we looked forward to working with all parties in building an Edge solution supported broadly by the industry.[7]

In these Reply Comments, the California Commission recommends modifications to the Edge proposal that will lessen the negative impact on competitive carriers, but still provide rural carriers the support necessary to preserve universal service and reasonable rates in rural areas. Accordingly, California recommends the following changes to the Plan's Edge scheme which may address some of the concerns raised by opponents of the proposal and help move the debate forward, while at the same time preserving universal

[7] People of the State of California and the California Public Utilities Commission Comments at p. 6.

telephone service: (1) the Edge proposal should apply only to competitive carriers, Track 2 or Track 3 rural telephone companies[8] and two percent carriers; (2) a Track 2 or Track 3 carrier should not be permitted to designate an end office as an Edge if the end office subtends the carrier's own eligible access tandem; (3) the Rural Transport Rules should be adopted; and (4) the proposed Tandem Transit Service rate should be lowered.

IV. EDGE DESIGNATION AND SECTION 251(C)(2) OF THE COMMUNICATIONS ACT OF 1934 ISSUE

The Missoula Plan's default interconnection rules use an Edge architecture to establish how telecommunications carriers would share the cost of linking their networks for the exchange of non-access traffic.[9] Each telecommunications carrier would be required to designate at least one Edge designation in each LATA in which the carrier receives traffic from other carriers and permit other carriers to directly or indirectly interconnect at its Edges. Although other locales for interconnection are permitted as provided for under Section 251(c)(2)(B), with the exception of the Rural Transport Rules as noted below the Plan creates an obligation for an originating carrier to pay the terminating carrier for transport to the terminating carrier's Edge.[10]

One of the key arguments raised by opponents of the Edge proposal is that it violates the provisions of Section 251(c)(2)(B) which requires non-rural ILECs "…to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network – (A) for the transmission and

[8] 47 U.S.C. 153 (37).

[9] *See* Missoula Plan for Intercarrier Compensation Reform at pp. 42-48.

[10] Missoula Plan, pp. 30-35 and p. 41.

routing of telephone exchange service and exchange access; (B) at any technical feasible point within the carrier's network…."[11]

The California Commission believes that the opponents of the Edge proposal have raised a legitimate concern that the Edge proposal violates, if not the letter of the law, then at least the spirit of Section 251(c)(2)(B).[12] Even though the Plan would continue to allow requesting carriers to physically interconnect with a non-rural ILEC at any technically feasible point as required under Section 251(c)(2)(B), the requesting carrier would have to pay interconnection fees as if it had connected at the ILEC's designated Edge. It is questionable whether a court would uphold an FCC Order applying the Edge requirement to non-rural ILECs. Even if such a ruling were upheld, such an FCC Order could still result in years of litigation and uncertainty to the benefit of no one. Without a statutory change, it would not appear feasible nor judicious to go down this path.

However, California does not believe there is any legal impediment to requiring competitive carriers, rural telephone companies or two percent carriers to designate Edges for interconnection purposes. Section 251(c) does not apply to competitive carriers, and Section 251(f)[13] permits commissions to exempt rural telephone companies and two percent carriers from the requirements of Section 251(c).

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[11] Comptel Comments at pp. 9-10; Time Warner Cable Comments at p. 18; National Cable & Telecommunications Association Comments at p. 15-16; Dobson Cellular Systems, Inc.; American Cellular Corporation at pp. 6-7; and Ohio Commission Comments at p. 24.

[12] 47 U.S.C. § 251(c)(2)(B).

[13] 47 U.S.C. 251(f).

Therefore, the California Commission recommends that the Edge proposal be modified so that it applies only to rural telephone companies, two percent carriers and competitive carriers. All other ILECs would continue to be governed by the requirements of Section 251(c)(2)(B).

V. PRESERVATION OF UNIVERSAL SERVICE WHILE PROMOTING COMPETITION

Opponents of the Edge proposal argue that the proposal is anti-competitive in that it would impose additional costs on CLECs, especially as it applies to interconnection between CLECs and Track 2 and Track 3 carriers. Among other things, the commenters oppose (1) permitting Track 2 and Track 3 carriers to declare an end office as an Edge where the end office subtends the carrier's own access tandem; and (2) the Rural Transport Rule and the Modified Rural Transport Rule.[14]

With respect to the Rural Transport Rules, opponents note that these proposals are in opposition to current FCC rules that prohibit a LEC from assessing charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network[15] and are contrary to a rational and non-discriminatory approach to interconnection.

Opponents of the Rural Transport Rules argue that the Rules favor ILECs at the expense of wireless and other competitive carriers and their customers. They also argue that the Rules would enable rural ILECs to impose inefficient legacy wireline network

[14] National Cable & Telecommunications Association Comments at p. 8 and p. 17; Sprint Nextel Corporation at pp. 32-35; CTIA – The Wireless Association at p.11; Comptel Comments at pp. 12-15.

[15] 47 C.F.R. 51.703(b).

costs on their competitors. Moreover, opponents argue that the unique obligations imposed by the Rules on competitive carriers are further compounded by the effects of the Tandem Transit Service rate proposed in the Plan. Opponents recommend the FCC impose symmetrical interconnections and transport obligations on all carriers.[16]

Supporters of the Rural Transport Rules argue that the Rules appropriately assign transport responsibility to Track 1 carriers for rural telephone company's originating traffic because wireless carriers and other competitive carriers design their networks to minimize the number of switches in their networks. As a tradeoff for lower switching costs, these competitive carriers require long transport routes in order to interconnect with rural ILEC networks. "Wireless carriers trade switching costs for transport in order to minimize costs under their own design criteria. A single CMRS carrier's MTSO typically serves vast areas of rural territory covering many local exchange areas. This engineering choice represents a different tradeoff between cost and network availability and reliability. The rural ILEC should not be responsible for the transport cost associated with network engineering designed to avoid costs. Those benefits already flow to the CMRS carriers in the form of lower switching costs. The Missoula Plan reflects this reality by assigning the cost of extraordinary long transport to the CMRS carrier."[17] Therefore, supporters argue that CMRS providers and other such carriers should logically bear the financial responsibility for transport outside of the rural ILEC's network.

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[16] National Cable & Telecommunications Association Comments at p. 8 and p. 17; Sprint Nextel Corporation at pp. 32-35; CTIA – The Wireless Association at p. 11; Comptel Comments at pp. 12-15.

[17] The South Dakota Telecommunications Association at pp. 11-12.

The Rural Transport Rules, similar to the Missoula Plan's proposal to permit rural ILECs to designate an end office as an Edge, were proposed in recognition of the high-cost nature of telecommunications service provided by small rural ILECs and a desire by Missoula Plan proponents to minimize revenue recovery under the proposed Restructure Mechanism (RM).

The California Commission recognizes the legitimacy of the arguments of both the supporters and opponents of the Rural Transport Rules. Based on our desire to preserve universal service, provide necessary support to rural carriers and offer reasonable rates to rural customers, California recommends that the FCC adopt the Rural Transport Rules. However, in order to provide more balance to this scheme, we also recommend that the Plan be modified to prohibit a Track 2 or Track 3 carrier from designating an end office as an Edge if that end office subtends the carrier's own eligible access tandem. Furthermore, California recommends that the FCC adopt a lower transit rate as discussed in detail in the next section, so that the costs to competitive carriers of interconnection for non-access traffic will not be too burdensome as to hinder the growth of competition.

VI. TANDEM TRANSIT SERVICE

With respect to Tandem Transit Service, the Missoula Plan proposes that (1) carriers assess an arbitrary, non cost-based transit rate of $0.0025[18]; (2) the $0.0025 transit rate cap be lifted at Step 4; (3) the transit volumes be limited to 400,000 minutes of use (MOU) per month between two switch points; and (4) carriers be allowed to

[18] Missoula Plan, p. 51.

impose a premium rate (of up to double the rate otherwise in effect) if carriers exceed the threshold transit volume of 400,000 MOU per month.

Many commenters[19] on the Missoula Plan opposed the Tandem Transit rate proposal because (1) most competitive carriers are dependent on the large ILECs for transit service, (2) the proposed $0.0025 transit rate is higher than the transit rate in many states, (3) there is no cost justification in the Plan for the proposed transit rate as required by Section 252(d)(1) of the Communications Act of 1934, and (4) lifting of transit rate cap at Step 4 is completely unjustified.

VII. TANDEM TRANSIT RATE CAP

The California Commission believes that the commenters have raised legitimate concerns and concurs with some of their proposals to resolve the tandem transit rate issue, specifically, their proposal to lower the transit rate.

In its comments of October 25, 2006, the California Commission proposed that the FCC utilize Verizon's TELRIC-based UNE rate of $0.001928 as the cap rate for originating traffic as well as the terminating traffic for Track 1 carriers on a nationwide basis.[20] The California Commission recommended Verizon's TELRIC-rate rather than AT&T's rate because Verizon's rate was based on the most recent updated 2004 costs.[21]

[19] CTIA Comments at p. 14; FNK Inc. Comments at p .45; NCTA Comments at p. 23; Sprint Nextel Corp. Comments at p. 15; Time Warner Cable Comments at p. 20; Time; CBeyond, and Xspedius Comments at p. 8; Missouri Commission Comments at p. 52; and Ohio Commission Comments at p. 46.

[20] People of State of California and the California Public Utilities Commission Comments at pp. 10-11. The terminating rate of $0.001928 is the sum of tandem switching rate of $0.000364, end office switching of $0.001511, and tandem transport rate of $0.000053.

[21] CPUC Decision (D.) 04-09-063, D.05-05-031 and D.06-03-025.

For similar reasons, the California Commission proposes that the FCC utilize Verizon's TELRIC-based UNE rate of $0.000417[22] as the cap rate for tandem transport, which is lower than the Plan's proposed cap rate of $0.0025. California believes that this rate is appropriate because it is cost-based and is consistent with Section 252(d)(1) of the Communications Act of 1934, which provides, in part, that interconnection pricing be provided at cost-based rates.

California believes that the Missoula Plan's proposal to lift the transit rate cap at Step 4 is unjustified because the Plan incorrectly assumes that a competitive transit service market exists today or unrealistically assumes that competition will develop in the short term of the Plan. In addition, the California Commission is concerned that lifting the transit rate cap would result in enormous cost increases and would deregulate the tandem transit market, leaving some carriers with few or no competitive options for the exchange of traffic. Therefore, to mitigate these concerns, the California Commission recommends that the transit rate cap not be lifted at Step 4 as proposed in the Plan.

California further recommends that the Missoula Plan should require a competitive market analysis every two years, beginning at step one of the Plan, to determine the competitive nature of transit services at that particular point in time in each state. If the market analysis in a particular state determines that competition exists and that the transit rate will be able to support deregulation, then the cap on the Tandem Transit rate for that

[22] People of State of California and the California Public Utilities Commission Comments, Appendix A. ($0.000417 is the sum of $0.000364 tandem switching rate plus $0.000053 tandem transport rate.)

state should be lifted. However, if the market analysis determines otherwise, then the rate cap should remain in place until competition has been established in that state.

In addition to the transit rate proposals noted above, the Missoula Plan proposes to limit the threshold for Tandem Transit Service to 400,000 MOU per month imposed on ordering.[23] If a carrier exceeds this threshold, then the carrier is subject to up to two times the transit rate in effect at that particular point in time.[24] While this proposal will not impact those small carriers who normally transport traffic less than the threshold level, larger carriers who rely completely on ILECs to deliver their traffic will be financially disadvantaged and will likely exceed the proposed allotment of minutes under the Plan.

While some commenters[25] urged the FCC to reject the unreasonable volume limitations of 400,000 MOU per month and the imposition of a premium rate on carriers that exceed this threshold, others, such as NCTA proposed the following: (1) a reasonable basis for direct interconnection between two carriers would be the exchange of traffic that would fill a DS 3 transport facility, which provides 28 DS1 of capacity; and (2) a 20 percent increase to the currently charged transit rate, provided that such rate is set no higher than $0.001 per minute, when traffic volume exceeds the established threshold.[26] Additionally, NCTA specifically affirmed that Cox proposed that ILEC transit provider could increase the transit rate for traffic that exceeds the equivalent of ten

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[23] Missoula Plan, p.52.

[24] *Id.*

[25] Ohio Commission Comments at p. 47; Time Warner Cable Comments at p. 20.

[26] National Cable & Telecommunications Association at p. 13.

DS-1s between two switches and that once that trigger is met, both carriers would be obligated to enter into a direct interconnection agreement within 180 days.[27]

The California Commission believes that the 400,000 MOU threshold level as well as the assessment of the premium rate once the carrier reached the threshold level has no basis. The California Commission recommends that the FCC should adopt a higher threshold than 400,000 MOU in order to promote competition. A potential compromise for the FCC to consider is the NCTA/Cox proposal.

California has set forth its recommendations on this transit issue, as well as other aspects of the Edge, in order to resolve divergent views and hopefully to move parties toward consensus.

VIII. FLOW-THROUGH OF CUSTOMER SAVINGS

Finally, in order to remain consistent with the intent of the Missoula Plan, as depicted in its customer impact sheets,[28] California recommends that the Missoula Plan flow-through 100% of the savings in intercarrier rates to a carrier's customers.

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[27] *Id*. at 25.

[28] *Missoula Plan*, Master Data (Exhibit 1, p.18).

Respectfully submitted,

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January 31, 2007